

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

PANFILO PEREZ	§	
VS.	§	CIVIL ACTION NO. 9:19-CV-185
PAUL K. REILLEY	§	

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ACCEPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Panfilo Perez, a prisoner confined at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Paul K. Reilley.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e).

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the objections are without merit.

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Plaintiff alleges that his medical footwear and knee brace were confiscated in 2015. On May 30, 2016, plaintiff requested new footwear and a new knee brace. Defendant Reilley allegedly denied the request after concluding that plaintiff did not meet the criteria for a referral to a specialist. The two-year statute of limitations began to run in June of 2016, when defendant Reilley denied plaintiff's requests. This action was not filed until October 15, 2019, more than one year after the statute of limitations expired. If it is clear from the face of the complaint that the claims are barred by the statute of limitations, the action is properly dismissed as frivolous. *Gartrell v. Gaylor*, 981 F.2d 254, 256 (5th Cir. 1993). Because this action is barred by the statute of limitations, the Magistrate Judge correctly concluded that the action was subject to dismissal under § 1915(e).

ORDER

Accordingly, plaintiff's objections (document nos. 13 and 17) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 11) is **ACCEPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So Ordered and Signed

May 5, 2020



Ron Clark, Senior District Judge